PETITIONER'S REPLY.

Preliminary Statement.

It is regrettable that in this Court it seems necessary to correct a statement in respondent's brief in opposition which would, if taken as written, mislead the Court upon a fact which might be important to the outcome of the case. At Page 3 of respondent's brief, the following statement appears:

> "In the absence of proper special equipment for moving the cars, the longshoremen under the surveillance of the ship's ranking officer [185b, 194b] ran a bull line from the bull winch of the ship's No. 3 hatch to car No. 4 and by surging the winch, . . . etc."

The record will not support the impression the respondent seeks to create, either at the pages cited or any other place. A mooring line [the subject of the testimony at 185b] is not even remotely similar to the bull wire used by the longshoremen in this case. The clear testimony, from respondent's own witnesses is that they did not recall any ship's officer "around the deck" at the time this car was moved [62a], they received no orders or directions from ship's officers relative to the car movement [62a], and that the instructions relative to movement of the railroad car came from respondent's fellow employee, Goldstein [32a, 41a, 47a]. Any participation, surveillance or knowledge of any ship's officer of the proposed method of moving the rail car is completely negated by the record. Thus negligence on the part of petitioner cannot be supported from the record.

ANSWER TO RESPONDENT'S ARGUMENT.

Respondent artfully ignores those features of the case at bar which place the decisions below in such sharp conflict with the decisions cited in the petition. That the method adopted by the independent contractor to move railroad cars was an improper method does not, by any means, demonstrate respondent's essential thesis that there was any "failure [of petitioner] to provide proper and safe equipment". That is the main point made by the dissent below. There was no evidence and no finding of anything improper about the ship's equipment—it was the poorly conceived method of using it which was unsafe and dangerous. The line from the No. 3 winch could have been led to a block placed forward of the car to be moved and there would have been no need for the bumping of one car by another. Pulling one car at a time had the blessing of respondent's expert witness, Stange [103a] and his counsel [170a]. The ship's other winches were likewise available [191b].

Thus, on the record before this Court, respondent has not and cannot distinguish *Massa* [332 F. 2d 779 (C. A. 2, 1964), petition for certiorari pending, No. 447]; *Puddu* [303 F. 2d 752 (C. A. 2, 1962)]; *Guarracino* [333 F. 2d 646 (C. A. 2, 1964)]; *Spinelli* [326 F. 2d 870 (C. A. 2, 1964), cert. denied May 18, 1964, — U. S. —, 84 S. Ct. 1338].

In each of these cases, an improper *method* of work aboard ship did not create unseaworthiness liability in the absence of improper ship's gear or equipment.

More significant than any other thing about respondent's opposition, however, are the cases he cites and the distinctions he draws. In the case at bar the injury occurred ashore, the improper and dangerous method was something executed ashore and involved vehicles used and usable only ashore. There was nothing whatsoever defective, improper or dangerous about the respondent's ship and no improper act was done by the ship or upon it. All

of the cases upon which respondent relies involved injuries aboard ship or acts aboard ship which resulted in injury ashore.

An analogy might be drawn between a man shooting a gun while on board a ship. He wounds a victim ashore. A second man shoots a gun on shore and wounds a victim on shore. One can see some maritime connection in one case but none in the other.

The decision below is novel and important. Already other actions based upon it have been instituted and are pending in the district courts. Thorough examination of the pros and cons by this Court is urgently required to avoid the confusion and doubt engendered by conflicting rulings and, more important, by conflicting concepts. It is interesting and significant to note Page 11 of respondent's brief wherein he flatly states: "The situs of a tort of itself will determine whether or not it is maritime", citing abundant authority for the statement.

Thus respondent seems to concede error below and the writ should be granted.

Respectfully submitted,

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